

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

HEADWATER RESEARCH LLC

*Plaintiff,*

v.

SAMSUNG ELECTRONIC CO., LTD and  
SAMSUNG ELECTRONICS AMERICA, INC.,

*Defendants.*

Case No. 2:22-CV-00422-JRG-RSP

**JURY TRIAL DEMANDED**

**[REDACTED]**

**SAMSUNG'S REPLY IN SUPPORT OF ITS MOTION TO STRIKE CERTAIN  
OPINIONS OFFERED BY DR. RICHARD D. WESEL**

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**\*All emphasis and annotations added unless otherwise noted**

**I. HEADWATER CONCEDES THAT IT IS ACCUSING SAMSUNG'S [REDACTED] [REDACTED] FEATURE FOR THE FIRST TIME IN THE WESEL REPORT**

Headwater makes no attempt to show that its infringement contentions accused Samsung's [REDACTED] feature.<sup>1</sup> See D.I. 178, 2-3. Rather, Headwater argues that it can accuse the Samsung-developed [REDACTED] feature for the first time via the Wesel Report—without leave of Court—simply because its infringement contentions previously accused the Google-developed Data Saver feature, which could be used while roaming. See *id.*, 2 (arguing that the contentions stated, “Data Saver . . . is especially useful when roaming.” (quoting D.I. 165-3, 23, 41)). Headwater’s argument defeats the purpose of P.R. 3-1 (i.e., notice), and should be rejected.

Even accepting Headwater’s vague assertions that the “[REDACTED] [REDACTED] *id.*, they are indisputably different features, developed by different companies, at different times. Ex. B, ¶¶ 104, 128. This was confirmed by Samsung’s 30(b)(6) witness, Mr. Kim, and Headwater’s expert:

- “Data Saver is required by Google.” D.I. 165-10, ¶ 81.
- “Samsung created [REDACTED].” D.I. 165-10, ¶ 82.
- “[REDACTED] was . . . developed by Samsung.” Ex. C, 121:14-122:2.
- “[Data Saver] was developed by Google.” Ex. C, 225:17-20.

Headwater’s opposition even includes separate power point slides for Google’s “Data Saver” and Samsung’s [REDACTED] features. See D.I. 178, 14-15.

Contrary to Headwater’s attorney-argument, Dr. Wesel does not use [REDACTED] as “additional proof that the charted ‘Data Saver’ feature infringes.” *Contra* D.I. 178, 2. Rather,

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<sup>1</sup> Nor could it. During the deposition of Headwater’s 30(b)(6) witness, Samsung represented—without objection from Headwater’s counsel—that, based on Headwater’s contentions, Samsung’s [REDACTED] was not accused. Ex. A, 145:24-146:8. Then, after a break in the deposition during which Dr. Raleigh admittedly spoke about the substance of his testimony with counsel, Dr. Raleigh explained [REDACTED]. *Id.*, 273:14-275:23.

he separately accuses Samsung's [REDACTED] and Google's Data Saver of infringement. Compare D.I. 165-10, §II.A (identifying Google's Data Saver as accused feature), with §II.B (identifying Samsung's [REDACTED] as accused feature). Headwater's validity expert agrees. Ex. D, ¶ 1377 (stating that Dr. Wesel *does* accuse [REDACTED]). Because Headwater does not dispute that its contentions failed to accuse [REDACTED] of infringement, Samsung respectfully requests that the Court strike the paragraphs from the Wesel Report listed in Ex. J, D.I. 165-11, accusing "Samsung's [REDACTED] of infringement."<sup>2</sup>

## II. THE WESEL REPORT IS INCONSISTENT WITH THE CONTENTIONS

### A. The '976 Patent

For the Asserted Patents in which Headwater sought to accuse "Power Saving Mode" of infringement, Headwater's infringement contentions clearly, and unambiguously, stated as much:

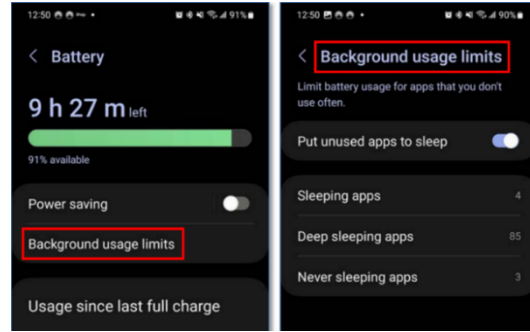
|   |
|---|
| <p><b><u>Amended Exhibit A - U.S. Patent No. 9,137,701 ("701 Patent")</u></b></p> <p>Accused Instrumentalities: Samsung phones and tablets which implement Data Saver and/or Power saving mode, and all versions and variations thereof since the issuance of the asserted patent.</p>  |
| <p><b><u>Amended Exhibit B - U.S. Patent No. 9,271,184 ("184 Patent")</u></b></p> <p>Accused Instrumentalities: Samsung phones and tablets which implement Data Saver and/or Power saving mode, and all versions and variations thereof since the issuance of the asserted patent.</p>  |
| <p><b><u>Amended Exhibit C - U.S. Patent No. 9,277,445 ("445 Patent")</u></b></p> <p>Accused Instrumentalities: Samsung phones and tablets which implement Data Saver and/or Power saving mode, and all versions and variations thereof since the issuance of the asserted patent.</p>  |
| <p><b><u>Amended Exhibit D - U.S. Patent No. 9,521,578 ("578 Patent")</u></b></p> <p>Accused Instrumentalities: Samsung phones and tablets which implement Data Saver and/or Power saving mode, and all versions and variations thereof since the issuance of the asserted patent.</p>  |
| <p><b><u>Amended Exhibit E - U.S. Patent No. 11,405,224 ("224 Patent")</u></b></p> <p>Accused Instrumentalities: Samsung phones and tablets which implement Data Saver and/or Power saving mode, and all versions and variations thereof since the issuance of the asserted patent.</p> |

See D.I. 165-02 at 1; D.I. 165-04 at 1; D.I. 165-06 at 1; D.I. 165-08 at 1; D.I. 165-09 at 1.

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<sup>2</sup> At a minimum, any discussion of Samsung's [REDACTED] should be stricken from ¶¶ 194, 710, 947, 1228, 1961, 2247, which—according to Headwater—only "mentioned [REDACTED] in passing." D.I. 178, 2-3. With respect to ¶ 45, which Headwater alleges relates to its "copying allegations," *id.*, 3, and is being used to compare Samsung's products to non-accused ItsOn products, D.I. 165-10, ¶¶ 43-45, such paragraph should also be stricken for violating this Court's Standard *Limine* Order Nos. 9 (copying) and 18 (comparisons to non-accused products).

Yet, the text of Headwater’s *87-page* chart for the ’976 patent fails to mention “Power Saving Mode” *even once*. D.I. 165-03. Thus, to persuade the Court that it preserved its allegations against Power Saving Mode, Headwater points to a single



picture relating to an entirely separate accused feature (i.e., background usage limits) and which—by happenstance—shows a setting for the unaccused “Power Saving Mode.” *Id.*, 34 (above). It is clear from the explanatory text Headwater provided above this image that it relates to the accused

“Background Usage Limits” feature, not “Power Saving Mode.” *Id.*, 29

battery are responsible for practicing these claims. As a further example, the Accused Products are capable of operating in particular modes, including without limitation “Adaptive Battery,” “Doze” and “App Standby” modes, during which time data may be communicated to at least one WWAN, and during which communications to and through the WWAN may be controlled by network access rules, such as those applied by the Accused Products through modes such as “Adaptive Battery,” “Doze” and “App Standby.” As a further illustration, different applications run on the Accused Products may be classified into different buckets in connection with these modes, such as those shown in the disclosure of the Accused Products’ UX with the name “Background Usage Limits.”

(right).<sup>3</sup> Headwater’s contentions never accused Power Saving Mode of infringing the ’976 patent.

## B. The Remaining Asserted Patents

Despite Headwater’s contentions expressly identifying the Accused Products for the ’701, ’184, ’445, ’578, and ’224 patents as “phones and tablets which implement *Data Saver* and/or *Power Saving Mode*,” Section II.A., *supra*, Headwater now claims that it actually accused *App Standby* and *Doze*.<sup>4</sup> There is no dispute that none of those charts mention App Standby or Doze. At best, Headwater argues that Samsung was somehow put on notice about App Standby and Doze

<sup>3</sup> Headwater also alleges that its contentions referenced a “power allow list,” a “Power Manager API,” and a “isIgnoringBatteryOptimizations” function. D.I. 178, 5. Just because Headwater’s chart references items that relate to power saving features such as Doze or App Standby, that does not mean Headwater preserved its ability to accuse *unnamed* features, like Power Saving Mode.

<sup>4</sup> Headwater does not address App Standby/Doze for 1[d], [e], [g], or [h] of the ’445 patent, nor any of the individual limitations challenged by Samsung for the ’184, ’701, ’578, or ’224 patents.

because a webpage mentioning “Battery Saver” (i.e., Power Saving Mode), which *is* accused, D.I. 179-1, along with a second webpage that it links to, D.I. 179-2, happen to also mention App Standby and Doze. D.I. 178, 10. This accusation-by-incorporation argument should be rejected.

With respect to the ’433 patent, Headwater concedes that its contentions failed to rely on “Doze” for **1[b]**, but claims this failing is “irrelevant.” D.I. 178, 12. Headwater does not dispute that it failed to rely on “Data Saver” for **1[d]-[f]** at all. *Id.* Headwater also implicitly concedes that it failed to accuse “Power Saving Mode” by again relying on the same picture it did for the ’976 patent discussed in Section II.A. With respect to the ’544 patent, Headwater does not dispute that it failed to chart Doze or Power Saving Mode for **1[b]-[c]**, but nevertheless argues that Dr. Wesel can because Headwater charted those features for **1[d]**. *Id.* These failures are both relevant and informative, as this Court’s rules make clear that Headwater’s contentions needed to “identify[] specifically where *each element* of each asserted claim is found.” P.R. 3-1(c).

### **C. Paragraphs Touching on Both Accused and Unaccused Features**

As Headwater notes, Dr. Wesel often addresses various features together, D.I. 178, 8, regardless of whether its contentions failed to accuse one or more of them for a given patent, claim, or limitation. Dr. Wesel compounds the problem by repeatedly copy and pasting those co-mingled paragraphs. For the avoidance of doubt, Samsung does not seek to strike discussions of features actually accused in the contentions. Thus, to the extent certain paragraphs identified in Samsung’s motion include discussions of multiple features, Samsung requests the Court to—at a minimum—strike the portions of those paragraphs that identify or accuse features Headwater failed to accuse of infringement in its contentions for those patents, claims, or limitations.

### **D. The Parties Met and Conferred**

Headwater baselessly accuses Samsung of failing to meaningfully meet and confer. D.I. 178 at 3-4. In doing so, Headwater cherry-picks a quote from an email without attaching that email

to provide the Court with necessary context. As is evident from the email exchange, Samsung met and conferred with counsel for Headwater twice on this issue—on April 1<sup>st</sup> and April 2<sup>nd</sup>. *See* Ex. E at 1, 4-5. Both times, Samsung explained that “for nearly every claim of every patent,” “Headwater’s contention[s] identified a feature, or set of features, for a specific claim, and Dr. Wesel either expanded, or outright changed which features Headwater was accusing for those claims and patents.” *Id.* at 3, 5, 6. Samsung also provided examples for both independent claims and dependent claims where Dr. Wesel’s opinions exceeded the bounds of Headwater’s contentions in this manner. *Id.* at 3, 5. Headwater’s contention that Samsung acted in “bad faith” because it did not expressly identify every single paragraph, limitation, and feature where this issue arose—when Dr. Wesel’s report includes **2,479 paragraphs** spanning **1,982 pages** and analyzes **~80 limitations**—should be rejected. The parties met and conferred twice, Headwater refused to withdraw any of Dr. Wesel’s opinions (even as to the multiple exemplary opinions that Samsung identified before and during the meet and confers), and an impasse was declared.

### III. “SAMSUNG’S NETWORK POLICY MECHANISM”

Finally, the Court should reject Headwater’s argument that Dr. Wesel’s “Network Policy” opinions relate only to code for the accused features. D.I. 178, 13-15. They do not. Instead, as shown to the right, Dr. Wesel is opining that the Network Policy files themselves, lacking any of the accused features (which ***did not even exist*** in Android 4.0), infringe. D.I. 165-10, ¶

40. Android Version 4.0 of was the first version of Android to include controls for applying differential traffic control policies, including files such as NetworkPolicy.java, NetworkPolicyManager.java, and NetworkPolicyManagerService.java, which ultimately infringe the claims of the Asserted Patents. *See, e.g.,* 1/23/2024 Sharkey Tr.:

40. This theory, relying on publicly available Network Policy files, without any regard for the accused features, did not exist in Headwater’s infringement contentions and should be stricken.

### IV. CONCLUSION

Samsung respectfully requests that the Court grant this motion.

Dated: April 22, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on April 22, 2024. As of this date, all counsel of record had consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A).

/s/ Jared Hartzman  
Jared Hartzman

**CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL**

I hereby certify that the foregoing document is authorized to be filed under seal pursuant to the Protective Order entered in this case.

/s/ Jared Hartzman  
Jared Hartzman